IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 1277 OF 2003

IN

EXECUTION APPLICATION NO. 282 OF 2003

IN

AWARD DATED 29TH MAY, 2001

Mr. Babubhai Thiba .. Plaintiff

vs.

Mr. Rafique Sarang .. Defendant.

vs.

Mr. Ashok Ravi Shankar

Naval .. Applicant.

vs.

The Sheriff of Bombay .. Respondents.

Mr. A.A. Bansal for plaintiff.

Ms. Ashar with A.M. Sarogi for Defendant.

CORAM : S.U.KAMDAR, J.

DATE : 9th MARCH, 2005.

P.C.

. The present chamber summons has been taken out for raising attachment levied on 11.8.2003 in respect of the premises No. 108 situated at Palm

Spring Co-operative Housing Society, 1st floor, Swami Samartha Nagar, Andheri West, Mumbai 400 053. It is the case of the applicant that he is the owner in respect of the aforesaid premises and in support thereof he relied upon agreement dated 1.10.1999 executed by and between Mrs. Shahnaz Rafique Sarang and Mr. Rafique Sarang with himself and his wife. Mr. Rafique Sarang is judgment debtor and there is a decree against him for the sum of Rs. 43,59,000/- which is under execution.

2. It is the case of the applicant that under the aforesaid agreement for sale dated 110.1999 executed by and between the judgment debtor and the applicant, the applicant has purchased the aforesaid premises and has paid a sum of Rs. 9,53,000/- in cash. The applicant relies upon the receipt attached to the said agreement for payment of Rs. 9,53,000/- in cash in full and final payment towards the said flat. He has further relied upon the record of the co-operative society in which the said premises are situated and contended that the said premises is duly transferred in the name of the applicant by the said society. On queries being raised, the learned counsel for the applicant has produced an agreement for loan also dated 1.10.1999. Thus, in the present case there are two agreements dated 1.10.1999, one is the agreement for loan for Rs. 9,53,000/- and another is an agreement for sale

of Rs. 9,53,000/- for the purchase of the said shop premises. It is the case of the applicant that the amount of Rs. 9,53,000/- is paid from time to time towards the loan lent and advanced and since the judgement debtor failed to give back the said loan amount, the agreement for sale which was also of the same date has been implemented and the said shop premises is consequently transferred in the records of the society sometime in or about 2001. The applicant produced before me income tax returns for the year ending 31.3.2000 and has relied upon an item of receipt of the loan from New Indian Co-op.Bank of Rs. 9,42,943.00 inter alia claiming that the said money which he has received from the bank has been paid by him in cash to the said judgment debtor. Nowhere in the income-tax return of 2000 it is indicated that any amount is lent and advanced by the applicant to the said judgment debtor nor such amount is reflected in the books of accounts as lent and advanced to the said judgment debtor. On further queries on the last occasion, when the matter was on board on 2.3.2005 I called upon the applicant to produce the copies of the returns for the year ending 31.3.2004 to show that the said shop premises is reflected as the assets of the applicant herein. Taking advantage of the adjournment, the applicant has prepared the balance sheet as on 31.3.2004 and has prepared income-tax returns signed on 5.3.2005 and filed on 7.3.2005

with the income-tax authorities and has produced the same today and has contended that there is a mention of the amount lent and advanced to one Rafique Sarang of Rs. 5,78,000/-. Similarly, the returns are produced of the wife which are also dated 5.3.2005 and lodged on 7.3.2005 indicating the amount lent and advanced of Rs. 3,75,000/-. It has been contended by the learned counsel for the applicant that the said entry reflects that the amount is duly paid and, therefore, the said shop premises is treated as an asset of the applicant herein.

3. Firstly, I am not able to accept the contention that the amount of Rs. 9,53,000/- would be paid by cash by the applicant particularly in light of the fact that no where relevant income-tax returns indicate that any such amount is lent and advanced by the applicant to the said judgment debtor. Secondly, both the agreements of loan and the agreement for sale is admittedly of the same date i.e. 1.10.1999. If the loan amount is lent and advanced on 1.10.1999 then there could not have any mention of the sale agreement of 1.10.1999 because the amount has not yet become due and payable by the judgment debtor to the applicant herein. Ex-facie both the agreement for sale dated 1.10.1999 and the agreement for loan dated 1.10.1999 are bogus documents and cannot be accepted. Apart

therefrom even in the income-tax returns which are produced on 31.3.2004, which is subsequent to the so called transfer, in the record of the society the said shop premises is not reflected as an asset of the applicant and thus I do not accept the case of the applicant that the applicant is a bonafide purchase of the said shop premises and decree ought not to be executed as against the said shop premises. I am of the further opinion that not only the applicant has resorted to production of fabricated documents before the Court but has also tried to mislead the Court. The matter was adjourned calling upon the applicant to produce the income-tax returns as on year ending 31.3.2004. The income-tax returns of the relevant year were never filed by the applicant. However, he has produced the income-tax returns which are filed subsequent to the adjourned date, the said returns were clearly filed by taking into consideration the queries of the Court and with the intention to produce the same before the Court to misguide the court as if the said returns of the relevant year were filed at the relevant time. In my opinion that is not the correct approach which the applicant has adopted. If he has not filed income-tax returns in the year 2004, it was his duty to disclose to the Court that no such returns are filed and cannot be produced. The learned advocate appearing for the applicant has conveniently not disclosed to the Court that the

said returns are filed subsequent to the date of the adjournment with a view to produce before this Court.

4. The Apex Court has in the case of Janki Vashdeo Bhojwani and another vs. Indusind Bank Ltd., and another, reported in (2005) 2 SCC 217 has held that even in an execution proceedings the conduct of the parties is very relevant and if the person has come with unclean hands then his application ought to be dismissed. In paragraph 16 the Apex Court has held as under :-

> "16. In civil dispute the conduct of the parties is material. The appellants have not approached the Court with clean hands. From the conduct of the parties it is apparent that it was a ploy to salvage the property from sales in the execution of decree."

5. In the aforesaid circumstances, I do not find any merits in the present chamber summons. I dismiss the chamber summons of the applicant with cost quantified at Rs. 15,000/- In this case I find that there are transactions which are conducted in cash of more than 9 lacs rupees which are ex-facie contrary tot he provisions of the Income-Tax Act . In view thereof, I direct that the Income-Tax

Authorities should make proper enquiries in the present case so as to ascertain how such a huge amount of cash is received and withdrawn from the bank and paid in cash firstly as a loan and adjusted towards sale transaction.

6. The Prothonotary and Senior Master, High Court, Bombay, is directed to send one copy of this order to the Income-Tax Authorities at Bombay.

7. C.C. expedited.